

# The Future of Publicly Funded Legal Services

The Advice Services Alliance's response to the Law Society's consultation paper

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## **1 Introduction**

1.1 The Advice Services Alliance (ASA) welcomes the Law Society's decision to initiate a debate within their membership on the future of publicly funded legal services. We also welcome the opportunity to respond to the consultation paper. This document will be set out under the following headings:

- the Advice Services Alliance
- our response to the consultation paper.

## **2 The Advice Services Alliance**

2.1 The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice services in the U.K. Our aims are to:

- Champion the development of high quality information, advice and legal services;
- Ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage;
- Encourage co-operation between organisations providing such services;
- Provide a forum for the discussion of issues of common interest or concern to advice organisations.

2.2 Full membership of ASA is open to national networks of independent advice services in the U.K. Current full members are:

- Advice UK (formerly Federation of Information and Advice Centres)
- Citizens Advice (formerly National Association of Citizens Advice Bureaux)
- Citizens Advice Scotland
- DIAL UK (the disability information and advice service)
- Law Centres Federation
- Scottish Association of Law Centres
- Shelter
- Shelter Cymru
- Youth Access

Age Concern England is in the process of becoming a full member.

2.3 Our members represent over 2,000 organisations which provide a range of advice and linked services to diverse groups working mainly on a local level throughout the U.K.

## **3 Our response to the consultation paper**

3.1 We intend to limit our response to those issues of significant concern to the not-for-profit advice sector. Therefore, we will not comment in detail on issues relating mainly to criminal and family law. Further, we have grouped some consultation questions, and responses, together.

3.2 ASA shares the Law Society's concern about the future provision of legal aid. We are concerned about the number of private practice solicitors leaving legal aid and the

impact that this will have on both the accessibility and total supply of legal services. The reduction in the number of suppliers threatens to put even more pressure on advice and law centres.

*Are these core principles still appropriate and if so, are there any additional principles that are necessary? Can they be applied to a cash limited budget, which of its nature involves rationing of legal services?*

- 3.3 It is our view that the core principles set out in paragraph 11 of the consultation paper need to be revised and expanded. We agree that it is essential that services are of good quality.
- 3.4 We also agree that easy geographical access is essential. However, we consider that the concept of accessibility needs to take into account the factors other than geography which inhibit people from seeking the legal help that they need. These might include a lack of awareness of their rights, fear of the cost of legal advice and language and cultural factors.
- 3.5 Similarly, the principle of **choice** needs to be defined more widely than a “choice of solicitors”. In areas of social welfare law, such as welfare benefits and debt, it is often appropriate that clients should be offered the choice of a non-solicitor agency. Further, there are circumstances where non-litigation approaches are most effective.
- 3.6 We agree that there should be **proper funding of services**.
- 3.7 Finally, we propose that an additional core principle of **independence** from central and local government should be added. In our view, the development of contracting, planning and new organisational forms make it essential that the principle of independence is explicitly asserted.

*Could the Law Centre/Law for All/South West Law models of provision of legal aid services be appropriate for wider employment of solicitors?*

*Should civil advice and assistance work be transferred from private practice solicitors to advisors in the Not-For-Profit sector? Alternatively, should the Not-For-Profit sector be expanded to allow them to compete on an equal basis with private practice?*

- 3.8 The consultation paper appears to suggest that employed solicitor services are significantly cheaper than *equivalent* services provided by private practice. We are not aware of any evidence that this is the case. Indeed the consultation paper contains evidence (in relation to employed criminal law services) that suggests that this is unlikely.
- 3.9 However, voluntary advice agencies do differ from traditional private practice firms in important ways:
- Voluntary organisations often have broader organisational objectives or mission which, together with the ability to secure additional resources (through charitable and other funding, and the recruitment of volunteers), can lead to a more integrated approach to solving individual client problems. These approaches can involve creating links with and, where appropriate, working with statutory services and other voluntary organisations.
  - They have a governance structure which allows for the possibility of community involvement in the running of services. This may contribute to ensuring that services are appropriate to the local community and that wider policy aims in relation to regeneration and promoting active communities are met.

- Public accountability through funding requirements, company and charity law can mean that voluntary organisations are seen as more transparent than most private practice firms.
- 3.10 As a result of the above, voluntary advice agencies have an important role in the delivery of social welfare law advice and in making such services accessible to more marginalised communities.
- 3.11 However, ASA continues to support a mixed economy in the provision of civil advice and assistance. We are strongly opposed to any suggestion of a two-tier service in civil legal aid. Similar proposals [of a two-tier structure] were made in the mid-1980s as part of the LCD's Legal Aid Scrutiny report and again in 1994 by the Legal Aid Advisory Committee. On both occasions, these proposals were rejected by both the advice sector and the Law Society.
- 3.12 We have the following reasons for this view:
- The separation of advice from representation could lead to a reduction in the quality of service and the accessibility of legal remedies. Diagnosis and initial advice are skilled activities. In some circumstances, effective diagnosis and initial advice depend on a realistic assessment of the benefits and costs of litigation.
  - The advice sector does not wish to become a gateway, or a rationing mechanism, for legal representation services. It is important that clients trust that advice services are acting in their interests only.
  - In line with the core principle of choice, we consider that it is important that people have a choice about where they seek initial advice. Professor Genn's study, *Paths to Justice* (1999), found that people seek advice from many sources. Any restriction on this could adversely impact on access.
  - The suggestion that the advice sector would do the "advice and assistance", leaving accredited lawyers to provide representation, does not take into account the many NfP agencies (both solicitor and non-solicitor) that are specialist providers of advice and representation services. Some of these agencies are acknowledged experts in their field.
  - Finally, and importantly, the successful transfer of services from the private sector to the voluntary sector would involve a major investment of resources. The voluntary advice sector currently does not have the capacity to take on such a task and would need considerable support. There are also significant cultural barriers to such a development. It is not at all clear that all those currently doing legal aid work in the private sector would be prepared to transfer to the not-for-profit or voluntary advice sector.
- 3.13 Having said this, ASA supports the development of more employed solicitor agencies on the law centre model. We also welcome the development of new organisational structures as long as the core principle of independence is maintained. We hope that such developments will encourage at least some solicitors to work in the legal aid sector.

*Should the Law Society encourage the use of new technology as a means of increasing access to justice? Should the Society actively work with the Legal Services Commission and local authorities to set up technology networks that solicitors can use?*

*Should the Society support the promotion of public legal education and awareness of the rights and responsibilities of citizenship through all schools, advice centres, libraries and courtrooms? Should such support include funding specific projects?*

*Should the Society support the creation of “Do It Yourself” schemes for people to enable the resolution of easier problems without the help of a solicitor?*

- 3.14 ASA is an enthusiastic supporter of the use of technology for the provision of legal information and education and our Advicenow website project ([www.advicenow.org.uk](http://www.advicenow.org.uk)) demonstrates this. We also support the development of a national strategy to co-ordinate the provision of legal information and education. However, we are very aware that new technologies are not accessible to all. The needs of those who are unable to use these technologies must also be met.
- 3.15 It is important that a clear distinction is made between the provision of general legal information and the provision of legal advice, which is aimed at individual circumstances. It is essential that the provision of legal information is not seen as a substitute for legal advice.
- 3.16 We also welcome the development of technologies that improve access to advice and representation. However, it is essential that members of the public who use such technologies are clear about who is providing the information or advice and that professional standards concerning confidentiality and conflict of interests are maintained. For example, people who want advice about their local authority landlord may be deterred from using a video link which has been established by that same authority.
- 3.17 Some advice agencies have successfully produced “DIY” guides for their clients. However, these developments have been patchy and, as far as we are aware, have not been formally evaluated. It is important to consider carefully the factors which would make a “DIY” guide successful. ASA would therefore support a limited pilot study, which should be linked to the use of new technology. Again, any “DIY” scheme needs to take into account that, for a variety of reasons, some people will be unable to use it and alternative services must be available to them. Depending on the scope of such schemes, their development may need to be done in conjunction with a simplification of court procedures and the introduction of procedural safeguards.
- 3.18 Advicenow, ASA’s legal information and learning website project, has commented on the above questions in more detail - see the appendix to this response.

*Should solicitors’ firms undertaking legal aid be paid on the same block funding basis as the Not-for-Profit sector?*

- 3.19 ASA has no objection to private practice solicitors being paid on the same block funding arrangements as NfP contractors. Whilst there are cash-flow advantages to this arrangement, we doubt that there are significant benefits in relation to the administrative burden.

*Should the Society seek an increase in the jurisdiction of ombudsmen schemes and specialist tribunals?*

- 3.20 The Advice Services Alliance is currently consulting on its policy in relation to Alternative Dispute Resolution (ADR). We are therefore unable to give a detailed response to the above question. However, we broadly support the development of ADR approaches to resolving disputes, but are opposed to compulsion.
- 3.21 We would caution against any assumption that an increase in the jurisdiction of ombudsmen schemes and specialist tribunals would lead to a significant reduction in the need for legal help. ADR approaches and specialist tribunals are unlikely to be and should not be seen as a substitute for good quality legal advice.

- 3.22 Further, it is ASA's policy that legal aid should be extended to cover representation in more tribunals e.g. employment and special educational needs. There is significant anecdotal evidence that people are deterred from taking tribunal cases unless they have representation. A 1989 study (H. Genn & Y. Genn, the Effectiveness of Representation at Tribunals) found that tribunal applicants had a significantly improved chance of success if they were represented.

*Is legal expenses insurance a viable option for funding legal services and should the Society support a level of compulsion?*

- 3.23 ASA does not at present have a policy in relation to legal expenses insurance and would assume that issues of quality and regulation would need to be considered before any final view could be taken. In any event, it would be essential that any scheme would provide full protection for those who are in receipt of welfare benefits or on low income and would be unable to afford any premium.

## Appendix

### The Future of Publicly Funded Legal Services

#### Legal advice and education - further comments from ASA's Advicenow Team

Advicenow is an Advice Services Alliance project which brings together the best available information on rights and legal issues on the internet and which promotes and develop learning and self-help material for delivery by the internet. Our website [www.advicenow.org.uk](http://www.advicenow.org.uk) was launched in June 2003 and we are continuing to produce a range of learning material for delivery via the site. In September we will begin a one-year Invest to Save funded project to test the delivery of self-help material via the internet.

ASA is responding separately to the consultation as a whole. Here we expand on the comments on paragraph 70.

*Should the Society support the promotion of public legal education and awareness of the rights and responsibilities of citizenship through all schools, advice centres, libraries and courtrooms? Should such support include funding specific projects?*

*Should the Society support the creation of 'Do It Yourself' schemes for people to enable the resolution of easier problems without the help of a solicitor?*

While the provision of information, whether via the internet or otherwise is no replacement for advice, our view is that the provision of information is an integral part of advice and legal services. The emergence of the internet provides us with an excellent vehicle for the delivery of information to the public and we are seeking to use this new medium to champion the delivery of information to the public including learning resources and self-help material.

We are focussing the production of learning materials on the specific problems and circumstances that many people experience in the course of their lives, for example, divorce and separation, cohabitation, and neighbour disputes. This material is intended to provide a better understanding of underlying legal issues and greater knowledge of how to go about dealing with problems including how to access advice and legal services.

The inclusion of citizenship within the national curriculum and the government's emphasis on life long learning gives an opportunity for advice and legal services to produce supporting material. There is good information available to teachers on the broader aspects of citizenship, 'how the law is made' for example, but a lack of practical information on how to deal with the legal and rights problems that most people will face in the course of their lives. We will use the provision of learning material via Advicenow to promote public legal education and to support education work in the community.

Much of what advice and legal services do takes place after the event. The strength of the education approach is that it can pre-empt problems and strengthen people's capacity to deal with difficulties.

We therefore firmly support the proposition in paragraph 70, particularly the proposal to fund specific projects. We would suggest pilot projects to test and evaluate the use of educational material on specific areas of law, combining the production of

material with its use in schools, advice services and other community organisations. These projects should also evaluate the use of information packs and learning material by lawyers and advisers as part of the advice giving process.

The same applies to self-help material and our forthcoming project will give us the opportunity to test the use of this material. There's a particular need to identify those issues which are appropriate for the self-help approach, and to ensure that users of self help material are given clear guidance on when to call on expert help.

We would question the assumption that DIY material is always used without the help of a solicitor or adviser. There will be circumstances where self-help material will be used on a stand-alone basis, but it also can be used very effectively in conjunction with some guidance from a lawyer or adviser. This approach has been used successfully by UK advice services and in Australia - see the article from Jeff Giddings and Michael Robertson reproduced on the Advicenow website at [http://www.advicenow.org.uk/go/about/au\\_static\\_18.html](http://www.advicenow.org.uk/go/about/au_static_18.html).

Community legal education continues to have a 'Cinderella' existence within legal services. We would like to see it recognised as an essential part of the Community Legal Service, and would welcome the opportunity to work with the Law Society and its members to develop this area of work.